1945.

File No. O. Foreigners/45

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A **BRANCH**

Subject:—

Opinions Under the Foreigners Act 1864

O Fs

File No. O. Foreigners /45

Gen. 194 e.

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Submitted.

2. Please see the P.& S.D. notes at pp. 193-198 ante. On a request from the Bombay Govt. to the Central Govt. for sanctioning as usual an allotment of Rs. 11584-2-3 from the Central revenues to the Provl. revenues to meet the expenditure incurred by this Govt. on account of the deportation of foreigners during the calendar year 1944, the Central Govt have replied that the expenditure for the deportation of persons from British India to Indian States should be borne by the Provl. Govt. as these persons were deported in the interests and under the orders of the Provl. Govt. The Govt. of India have thus objected to me at charges incurred for deportation of persons from British India to Indian States. The A.S.,P.&G.D. has observed in his note at p. 197 ante that the liability to meet deportation charges will depend on the construction of the term "foreigner" defined in Sec. 1 of the Foreigners Act, 1864 and has proposed that R.L.A. may be requested to advise whether subjects of Indian States are foreigners having regard to the fact that the Foreigners Act, 1940, specifically excludes Indian States subjects from the definition of foreingers. The Addl. Secy., P.& S.D. has stated that from the preamble to the Foreigners Act, 1864 it appears that Foreign States include States outside British India i.e. Indian States and that the Indian States subjects would therefore be covered

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(contd).

by the definition of "foreigner" in sec. Foreigners Act, 1864. The R.L.A. is requested advise on the point.

3. Sec. (1) of the Foreigners Act, 1864 defines the word "foreigner" to denote a person:-

(a) who is not a natural born British subject as defined in sub-sections (1) and (2) of section 1 of the British Nationality and States of Aliens Act, 1914, or (b) who has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in British India:

Provided that any British subject who, under any law for the time being in forced in British India, ceases to be a British subject, shall thereupon be deemed to be foreigner. In Emperor Vs. Jagerdeo (49Bom. 804) a person who was a subject of an Indian State was held to be a "foreigner". In his kconnection attention is please invited to para 6 of R.L.A.'s opinion No. 4055 dated the 12th July 1935. Consequently it is clear that subject of Indian Native States would be "foreigners" within the meaning of the Foreigners Act, 1864. The definition of "foreigner" in the Foreigners Act 1940 which expressly excludes any ruler or subject of any Indian State from the operation of the Act further goes to prove that Indian State subjects would be covered by the definition of "foreigner" in the Foreigners Act, 1864. The taken by the Addl., Secy., P.& S.D. in his xx note at p. 193 ante appears therefore to be correct.

Id/- S.A Vera 15/6

S.A.S. I agree
Reply may be:-
The view taken by the xxxx Addl. Secy., P.& S.D. at p. 198 ante is correct.
The subject f an Indian State is a foreigner x within the meaning of section 1 of the foreigners Act, 1864./\

Id/- R.T.K. 18/6

All.R. I agree

Id/- R.S.M. 19/6

A.L.R.
U.R. to P.& S.D. No. 4831 d. 28-6-1945

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The present procedure does not show that it is the Government of Bombay that duly determined the date. The procedure will have to be changed to make this clear. The method of communicating the date to the person concerned is a matter apart and is not dealt with in this opinion. It is permissible to instruct the person to leave by a certain way. The "endorsement" at page 34 is not suitable. It is doubtful if the order to leave by the first available vessel has any legal sanction. The force of that order is taken away by the following words "and in any case not later than". Further "the first available vessel" is not sufficiently exact. It is advisable to specify a particular date.

O.C. 31/-
19/6/45

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 367-Genfl dated 19-6-1945.

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It appears from the papers forwarded by P. & G.D. that the following three questions are raised for the R.L.A.'s consideration:

(1) Whether the revised forms of

(a) warrant of arrest at page 69 ante,

(b) detention warrant at page 71 ante,

(c) bail bond at page 73 ante, and

(d) surety bond at page 75 ante

are in order.

(2) Whether endorsement on the warrant of deportation by the serving officer that the foreigner should remove himself forthwith to his native place is ultra vires.

(3) Whether it is necessary to amend the Foreigners Act, 1864, for the purpose of restricting the movements of a deportee after service of the order of deportation.

2. Question (1) - All the revised forms appear to be in order.

3. Question (2). - It appears that an endorsement on the warrant of deportation by the serving officer that the foreigner should remove himself forthwith to his native palce is ultra vires for two reasons: (1) that the endorsement not being provided for in the Act connot form part of the deportation order and consequently without jurisdiction, and (2) that there is no provision in the Foreigners Act, 1864, empowering Government to order a foreigner to depart from British India by a particular route to any definite place outside India or to his place of birth. This question was condidered in Alter Coufoan. V. The Government of Bombay, 18 Bom. 636, and it was held L "The particular route to be specified in the order referred to in section 3 of Act III of 1864 (the Foreigners Act) is intended to be a route in

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British India and not a route beyond the [illegible] seas. The Indian Legislature must be taken to have known the extent of its legislative powers. It could confer no power on the Local Government which would be ultra vires of its own legislative powers; and the authority given by section 3 of Act III of 1864 must be taken to be an authority it could grant, viz. a local authority. When the foreigner, whose expulsion is considered expedient, resides at Lahore, Allahabad, or any other inland town, the Local Government can specify, and may have good reasons for indicating, in the order the particular route by which the individual is to remove himself, but once beyond the three mile limit I am not aware that the Local Government has any power over him." A similar view is taken by Justice Blagden recently in Kazim's case. He has observed: "A deportee would perfectly within his rights if he can succeed in prepersuading the master of the ship (having reached the high seas beyond the three-mile limit) to deviate from the course for the purpose of putting him down in Goa or any other part of non-British India, provided the ship be so navigated that he does not again come within the British Indian territorial waters with the petitioner on board. As stated above the Legislature having no power to prescribe for a deportee any route to his native place, it would be impossible to consture section 3A of the Foreigners Act as impliedly giving such power to Government.

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4. Question (3)- it appears that the Commissioner of Police considers it necessary to impose restrictions on the movements of the deportee until he leaves the shores of British India in compliance with the order of deportation. Section 3A of the Foreigners Act, 1864, provided for no power of Government to restrict the movements of such person after he has been served with the order of deportation. If it is found necessary to restrict the movements of a deportee the Act will have to be suitably amended.

Id/- P.N.H.
24/8/45
Remembrancer of Legal Affairs.

U.R. to P.& S.D.No., 6303 dated the 26th August 1945.

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Office of the R.L.A.

The words "without delay" in sub-section (5) of section 3A ~~fe~~ of the Foreigners Act, 1864 mean "within a reasonable time" and what is " ~~Reasonable time~~ "reasonable Time" will depend upon the circumstances of each case. No amendment of the Act appears necessary.

O.C. Sd/- 7/11/45

Remembrancer of Legal Affairs.

O.C.
U.R. to P.& S.D. No. 8339, dated 8th Nov. 1945.

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V.R.K.
11/7/56